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TABLE 15. ADVOCATE AND ATTORNEY FEE PROVISIONS UNDER WORKERS' COMPENSATION STATUTES AS OF JANUARY 1, 2007

Information on whether the agency provides ombudspeople or other worker and/or employer advocates; the basis of attorney fee calculations; who determines attorney fees; if there are additional fees allowed and under what circumstances; if it is unlawful to accept unapproved fees; if laypersons can represent claimants; if approved attorney fees become liens against awards; and if defense attorney fees are regulated.

Jurisdiction	Laypersons Can Represent Workers	Public Advocates or Ombudspeople Available For		Fees for Worker's Attorney Established By	Worker's Attorney Fee Formula	Formula for Medical Only Disputes	Source of Payments to Worker's Attorney	Worker's Attorney Fee Must Be Approved	Approved Fees Become Liens Against Award to Injured Worker	Defense Attorney Fees Regulated
		Employee	For Employer							
Alabama	No	No	No	Statutory formula	15% plus billable expenses	No	Paid out of the worker's benefits	Yes	Not by statute	No
Alaska	Yes	No	No	Statutory formula; administrative rule; determined in each case by the judge; or by agreement by the parties	Minimum fee is 25% of the first \$1,000 and 10% of the remainder if claim was controverted; if no controversion, awards are based on a "fully compensatory and reasonable" amount	No	Paid in addition to the worker's benefits but if the claim has not been controverted, the Board may order fees paid out of the compensation awarded	Yes	No	No
Arizona	No			Statutory formula	25% of compensation paid	No	Paid out of worker's benefits	No	No	No
Arkansas	Yes	Yes (legal advisor)	Yes (legal advisor)	Statutory formula	25% of compensation paid	No	Half paid by employer and half paid out of worker's benefits	Yes	Yes	No
British Columbia	Yes	Yes	Yes	Attorneys are not involved in our system	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
California	Yes, as long as they are not a disbarred attorney	No	No	Determined in each case by the judge	12 to 15% of the PD award and 12 to 15% of any disputed indemnity benefits awarded	Judge determines the amount based on the number of hours spent	Paid out of the worker's benefits	Yes	Yes	No
Colorado	Yes	No	No	The Director's discretion	A fee in excess of 20% of the benefits awarded is to be presumed unreasonable but the Director can make exceptions for cases that have been appealed	Reasonable fees calculated on a per hour basis	Paid out of the worker's benefits	No	No	No
Connecticut	Yes, during informal hearings	No	No	Administrative rule	20% of the total award	No	Paid out of the worker's benefits	Yes	Yes	No
Delaware	No	Yes	Yes	Statutory formula	10 times the statewide average weekly wage at the time of injury	No	Paid out of the worker's benefits but there are exceptions	No	No	No
District of Columbia			Yes	Statute	Not to exceed 20% of benefits secured	No	Paid out of worker's benefits but there are exceptions	Yes	Yes	No
Florida	No	No	No	Statutory formula	20% of the first \$5,000 of benefits secured; 10% of the remaining amounts provided in the first ten years and 5% of benefits provided after ten years	Judge can approve a maximum fee of \$1,500 per accident	Paid out of worker's benefits but there are exceptions	Yes	No	No
Georgia	No	No	No	Statutory formula	25% of income benefits	No	Paid out of worker's benefits but there are exceptions	Yes, if over \$100	Yes	No
Hawaii	Yes	No	No	Determined in each case by the judge, commissioner, magistrate, etc.	None	No	Paid out of the worker's benefits	Yes	Yes	No

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Idaho	No	No	No	Statutory formula and determined in each case by the Industrial Commission	25% of benefits secured by attorney with no hearing, 30% of the benefit awarded by decision after hearing	No	% taken out of the worker's benefits that were secured by attorney	Yes	Yes	Reported to the Industrial Commission in litigated cases, but not regulated
Illinois	No	No	No	Statutory formula	20% of compensation received up to 20% of 364 weeks of TTD. If there was a prior written offer, attorney can get more than 20% of additional amount recovered	No	Paid out of the employee's benefits	No	Yes	No
Indiana	Yes	No	No	Statutory formula	\$200 without recovery, 20% of the first \$50,000 awarded and 15% of any amounts over \$50,000	10% of benefits awarded	Paid out of the employee's benefits	No	No	No
Iowa	No	No	No	By agreement of the parties	None	No	Paid out of the employee's benefits	No	No	No
Kansas	No	Yes	Yes	Statutory formula or by agreement of the parties and can be determined in each case by the judge	Up to 25% of benefits obtained	No	Paid out of the employee's benefits	Yes	Yes	No
Kentucky	No	No	No	Statutory formula	25% of the first \$25,000; 15% of the next \$10,000 and 5% of the remainder up to a maximum of \$12,000	No	Paid out of the employee's benefits	Yes	Yes	Yes, they cannot exceed \$12,000
Louisiana	No	Yes (very limited)	Yes (very limited)	Statutory formula	20% of award	No	Paid out of the employee's benefits	Yes	Yes	No
Maine	Yes	Yes	No	Attorney fees may not exceed 30% of the benefits accrued, after deducting reasonable expenses	For lump sum settlements 10% of the first \$50,000; 9% of the next \$10,000; 8% of the next \$10,000; 7% of the next \$10,000; 5% of the next \$10,000; and 5% of any amount over \$50,000	No	Paid by the employee out of their benefits	Yes, only on lump-sum settlements	Yes	No
Maryland	No	No	No	Statutory formula and administrative rule	PPD awards = up to 20% of the amount due for the first 75 weeks, up to 15% for the next 120 weeks and up to 10% of the amount in excess of 195 weeks; TTD = 10% of the amount due	No fee allowable	Paid out of the employee's benefits	Yes	Yes	No

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Massachusetts	Yes	No	No	Attorneys fees are set by M.G.L. c. 152, Sec. 13A.	Attorney's fees are adjusted each year by the change in the CPI—Northeast Urban All Goods and Services as promulgated by the U.S. Department of Labor, Bureau of Labor Statistics. Adjusted each Oct. 1st	No	Are in addition to employee benefits awarded and are paid by the Employer/insurer	Yes	No	Yes—all attorneys must abide by the Bar's code of conduct
Michigan	No	No	No	Statutory formula and by Administrative Rule	Reasonable expenses and then a fee no more than 30% for a retainer or 15% of the first \$25,000 and 10% thereafter. (See 408.44 for details)	No	Paid out of benefits awarded to employee	Yes on settlements; No on open awards	No	No
Minnesota	No	No	No	Statutory formula	25% of the first \$4,000 and 20% of the next \$60,000	\$500 or hourly fee, whichever is less	Paid out of benefits awarded to employee, see exceptions in notes (1)	No	Yes	Yes, they cannot exceed \$13,000 per case
Mississippi	No	No	No	Statutory formula	25% of disability benefits	No	Paid out of the worker's benefits	Yes	Yes	No
Missouri	No	No	No	Determined in each case by the judge or by agreement of the parties	No statutory formula	No	Paid out of benefits awarded to employee	Yes	Yes	No
Montana	Yes, if they are not paid for representation	No	No	By administrative rule	20% of benefits gained through the attorney's efforts; 25% if goes to court or \$100 per hour, not to exceed the 2025 formula	No	Paid out of benefits awarded to the employee, but there are exceptions	Yes	Yes	No
Nebraska	No	No	No	Determined in each case by the judge or by agreement of the parties	Statute says "reasonable" attorney fee	No	Paid out of benefits awarded to the employee, but there are exceptions	Yes	Yes	No
Nevada	Yes (limited)	Yes	No	No statutory provision	None	No	Paid by the state if represented by the Nevada Attorney for Injured Workers	No		No
New Brunswick	Yes	Yes	Yes	Not applicable, attorneys are generally not involved in our system	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
New Hampshire	No	No	No	Statutory formula	20% of retroactive benefits, medical bill hearings costs and fees	Fees and costs	Paid out of the benefits awarded to the employee	Yes	Yes	No

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New Jersey	No	No	No	Statutory formula but determined in each case by the judge, commissioner, etc.	Up to 20% of award	Up to 20% of the medical benefits awarded	Paid out of the worker's benefits or in addition to the benefits paid to the worker; Judge has discretion to order either or both	Yes	Yes	No
New Mexico	Yes but they cannot be compensated	Yes	Yes	Determined in each case by the judge or by agreement of the parties	None	No	Fees are usually split between worker and employer/insurer but others of judgment can shift fees all to worker or all to employer	Yes	Yes	Yes—maximum fees of \$16,500 per case with no payment until case is concluded by order
New York	Yes, if they are licensed by the Board for this purpose	Yes	Yes	Determined in each case by the judge, commissioner, magistrate, etc.	None	No	Paid out of the benefits awarded to the employee	Yes	Yes	No
North Carolina	No	No	No	Commissioner	None	No	Usually paid out of the award to the worker, but there are exceptions	Yes	Yes	No
North Dakota	No	Yes (2)	No	Established by statute and administrative rule	Established by statute and administrative rule	Binding dispute resolution	WSI General fund	Yes	No	Yes—by contract
Ohio	Yes	Yes	Yes	Fee agreement between worker and attorney	No statutory formula	No	Paid out of the benefits awarded to the employee	No	No	No
Oklahoma	No	No	No	Statutory formula	20% of permanent disability awards 10% of temporary disability awards	Reasonable fee determined by the Court	Paid out of the benefits awarded to the employee	Yes	No	No
Ontario	Yes	Yes	Yes	Attorneys are not involved in our system	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Oregon	Yes	Yes	Yes	Generally done by administrative rule	25% of additional amount secured in lump sum settlements 25% of the first \$17,500 and 10% of the remainder (3)	No	Usually paid out of the award to the worker, but there are exceptions (4)	Yes	Yes	No
Pennsylvania	No	No	No	Agreement between attorney and client with agency approval, limited to 20% of compensation award	No statutory formula	No	Usually paid out of the award to the worker, but there are exceptions	Yes	No	No
Prince Edward Island	Yes if it is the worker's preference	Yes	Yes	Legal fees are not covered	Not applicable	No	Not applicable	Not applicable	Not applicable	No

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Rhode Island	No	No	No	Determined in each case by the judge or by agreement of the parties	No statutory formula	No	Usually paid in addition to the benefits paid to the worker; for a settlement, fees are generally paid out of worker's award and are not to exceed 20%	No	No	No
Saskatchewan	Yes	Yes	No	Attorneys are not involved in our system	Not applicable	Not applicable	None	Not applicable	Not applicable	Not applicable
South Carolina	No	No	No	Statutory formula and determined in each case by the judge	No more than 1/3 of the award	None	Paid out of the worker's benefits	Yes	Yes	No
South Dakota	No	No	No	Statutory formula	25% of the disputed amount; 30% if case goes to a hearing; 35% if taken to appeal plus costs and sales tax	No	Paid out of the benefits awarded to the employee, but there are exceptions	Yes	Yes	No
Tennessee	No	No	No	Statutory formula	Department to approve any attorney's fee if the fee does not exceed 20% of the award to the injured worker, or 20% of the first 400 weeks of benefits in cases of permanent and total disability. (This Act became effective May 30, 2007)	20% of the contested medical expense awarded by the court to the employee	Paid out of the worker's benefits	Yes	First lien against the recovery	Yes
Texas	Yes <sup>(3)</sup>	Yes	No	By administrative rule and are determined in each case by the judge	None	No	Paid out of the worker's benefits but in certain circumstances the insurer may be liable for the payment of the worker's attorney fees	Yes	Yes	Yes, guidelines exist for maximum hourly fees and established time periods by service type
US Federal Programs - FECA	Yes	No	No	An hourly fee petition is subject to approval by the Department	None	No	The worker pays their own attorney	Yes	No	No
US Federal Programs - Longshore	Yes	No	No	Determined in each case by the judge or by agreement of the parties	None	No	Generally paid out of the worker's benefits, but there are exceptions	Yes	No	No

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		Employee	For Employer							
Utah	Only in mediation, not in formal hearings	No	No	Administrative rule	20% of the first \$21,500; 15% of benefits over that amount not to exceed \$43,000 and 10% of weekly amounts in excess of \$43,000 up to a maximum attorney fee of \$10,850	Same as for indemnity benefits	Paid out of the worker's benefits	Yes	Yes	No
Vermont	No	No	No	Administrative rule and determined in each case by the judge, commissioner, etc.	Award of reasonable fees to the prevailing claimant is discretionary; maximum of \$60 per hour or 20% of benefits	No	May be paid out of the worker's benefits or in addition to them <sup>4)</sup>	Yes	Yes	No
Virginia	No	No	No	Determined in each case by the Commissioner	None	No	Generally paid out of the worker's benefits, but may be assessed against the employer/insurer if defense of claim is found to be unreasonable	Yes	No	No
Washington	Yes	Yes	Yes	Statutory formula or by agreement of the parties	30% of increase in award secured by the attorney	No	Paid out of the benefits awarded to the employee, but there are exceptions	No	No	No
West Virginia	No	No	No	Statutory formula or by agreement of the parties	20% of the award, not to exceed 208 week award	None	Paid out of the worker's benefits	No	No	No
Wisconsin	Yes <sup>3)</sup>	No	No	Statutory formula and by Administrative Rule	20% of the disputed amount; if no dispute, 10% of the amount awarded up to a maximum of \$100	No	Paid out of the benefits awarded to the employee	Yes	No	No
Wyoming	No	No	No	By administrative rule and determined in each case by the judge	None	No	Always paid in addition to the worker's benefits whether the worker wins or loses	Yes	No	Rates are set by rules and regulations

**Notes:**

- Minnesota - A portion of fees are reimbursed to the employee by the employer/insurer. If the worker's attorney successfully procures payments from a denial of liability, notice of discontinuance of benefits, or failure to make a payment of compensation or medical expenses within the statutory period after notice of injury or occupational disease, or otherwise unsuccessfully resists the payment of rehabilitation benefits or other aspects of a rehabilitation plan.
- North Dakota - Office of Independent Review statute 65-02-27 and admin rule 82-01-03.
- Texas - The lay representative must register with the Division. A lay representative may not receive a fee or remuneration, directly or indirectly, for the representation.
- Vermont - After formal hearing or court proceeding where employee prevails, attorney fees are usually awarded in addition to benefits. If claim dispute is resolved without formal hearing, fees may either be paid out of the worker's benefits or in addition to the award of benefits, depending in large part on the performance of the employer/insurer.
- Wisconsin - The lay representative must be approved by the WC Division if he or she has had three or less appearances in formal hearings. If the lay person has had more than three appearances, he or she must be a licensed representative in order to appear.